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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re GABRIEL C. et al., Persons Coming
Under the Juvenile Court Law.

B236840
(Los Angeles County
Super. Ct. No. CK76970)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

ADOLFO C.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County.

Marilyn Kading Martinez, Juvenile Court Referee. Affirmed.

Christina Gabrielidis Lechman, under appointment by the Court of Appeal, for
Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County
Counsel, Navid Nakhjavani, Deputy County Counsel, for Plaintiff and Respondent.

Adolfo C. ("Father") appeals from an order in the dependency proceedings concerning his son Gabriel and his daughter E. We affirm.

Facts and Discussion

At the Welfare and Institutions Code¹ section 366.22 ("18-month review") hearing in this case, the court found that return of the children to Father "would create a substantial risk of detriment to [their] safety, protection, or physical or emotional well-being" (§ 366.21, subd. (f).) Father's sole contention on appeal is that there is insufficient evidence for the finding.² Our review is for substantial evidence (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762) and we find such evidence.

In sum: DCFS first became involved with this family in 2009, when Gabriel, who was born in May 2006, was about three years old, and E., who was born in September of 2008, was five months. The problem which led to DCFS intervention was domestic violence, and the record establishes that the violence took place throughout Father's relationship with Mother.

In 2006, appellant was convicted of battery, after he hit Mother, breaking her nose. Mother was at the time pregnant with Gabriel. As a result, Father was ordered to complete, and did complete, a 52-week domestic violence program for batterers.

Then, in April 2009, during an argument with Mother, Father grabbed E. from her car seat and shook her. Police were called and Father was arrested for child endangerment.

Police also called DCFS, which investigated. As a result of that investigation, the family received voluntary family maintenance services. Father agreed to participate in individual and couples counseling, parenting classes, and random drug testing. He did

¹ All further statutory references are to that code.

² At that hearing, the court also terminated Father's reunification services. He has not sought review of that order. The court did not set a section 366.26 hearing, because Mother continued to receive reunification services.

so. Between June and December of 2009, Father had 42 individual or joint counseling sessions. The therapist reported that both parents had benefitted from counseling.

However, on January 31, 2010, Father again assaulted Mother. He choked her until she fell to the ground, then hit her. At first, both parents told DCFS that nothing had happened except an argument, but later both admitted that Father had attacked Mother. Mother also said that Gabriel saw this happen, and that she had been the victim of domestic violence throughout her six-year relationship with Father.

After the incident, Mother took the children and went to live with her mother.

Criminal charges were filed against Father, and as a result, he was ordered to complete a one-year parenting class and a 52-week domestic violence class. The court also issued a restraining order.

A section 300 petition was filed on March 25, 2010, on allegations concerning the domestic violence.

In April 2010, a counselor at Helpline Youth Counseling evaluated Father and wrote that while Father acknowledged that he had poor impulse control and an almost obsessive need for control, particularly with women, he "persistently attributes to [Mother] partial responsibility for the perpetual conflict between them." He loved Mother but did not know how to refrain from losing his temper. He acknowledged that he needed help, but the evaluator was uncertain about his depth of insight into the core sources of his anger.

Also in April, after Father learned that Mother had begun a romantic relationship with another man, he engaged in behavior which, while not violent, was problematic: he contacted that man, and then, when Mother drove up to her home, got into her car, went through her phone and deleted the man's number. He also called Mother repeatedly, and at one point entered her backyard without permission and in violation of a restraining order.

The section 300 petition was sustained in May 2010, under section 300, subdivision (b), on allegations that Mother and Father had a history of engaging in

domestic violence in the children's presence, that Mother was unable to protect the children in that she continued to live with Father and to allow him unmonitored access to the children, and that despite services, Father continued to assault Mother.

The children were placed with Mother. Father's reunification plan included 52 weeks of domestic violence counseling, parent education, and counseling with a licensed therapist to address case issues.

By the section 366.22 hearing, which was in October of 2011, Father had several times enrolled in domestic violence counseling, but had dropped out or been terminated for lack of attendance. He had again enrolled just before the hearing, but had completed only two sessions. He had not completed a parenting class. He testified that the cost of the programs and the distance he had to travel to get to the programs had prevented him from attending. During the dependency, Father raised the same concerns to DCFS and to the court, through counsel.

Father was in individual counseling, beginning in January 2011. In March, the therapist reported that Father was late to most of his appointments, but was cooperative and compliant during the sessions. He recommended that Father attend therapy in a consistent manner. In June, the therapist reported that Father had attended regularly weekly sessions, for a total of 17 sessions. He had been cooperative and compliant with the treatment plan, and had made progress in accepting responsibility for his violent behavior and in developing alternative reactions. The therapist wrote that further participation was not needed, but told DCFS something different, that Father needed to continue with counseling.

That therapist was leaving the organization, and would no longer be able to see Father. In October, DCFS reported that while Father was seeing that therapist, he was less explosive and more willing to communicate about the children. However, since he had stopped seeing that counselor, he had regressed to some extent: he resorted to swearing and yelling on the telephone.

Throughout the dependency, Father's and Mother's relationship was characterized by conflict. They could not agree on visits, and disparaged each other. Sometimes (the dates are unclear), Father was explosive in telephone calls, raising his voice, using profanity, and blaming others. In October 2011, both parents were ordered to complete a new program, Parents Beyond Conflicts, which Father completed.

The children suffered trauma another time during the dependency: In March of 2011, DCFS learned that Mother's new husband, Gilbert T., had disciplined Gabriel by hitting him with a belt and with his fists. Gabriel said that Gilbert T. had also hit E. A supplemental petition was filed and sustained, and the children were placed with their maternal grandmother.

At the section 366.22 hearing, Father testified that he had completed counseling in March or April, and that he had learned a lot about himself in counseling. He had learned, for instance, to understand the way he reacted to situations, and the negative effect his actions had on his children, and that he was learning to control himself. He believed that he could provide a safe and stable home for his children.

On this record, there is substantial evidence for the juvenile court's decision.

There was, as Father argues, evidence which would support a different decision. For example, throughout the dependency, DCFS wrote that Father cared about his children and expressed and showed love and concern. There was also evidence that Father had made progress in therapy, that his visits with the children were positive and that Mother did not believe that he was a danger to the children. His therapist wrote a positive report.

However, "When an appellate court reviews a sufficiency of the evidence challenge, we may look only at whether there is any evidence, contradicted or uncontradicted, which would support the trier of fact's conclusion. We must resolve all conflicts in favor of the court's determination, and indulge all legitimate inferences to uphold the court's order. Additionally, we may not substitute our deductions for those of the trier of fact." (*In re John V.* (1992) 5 Cal.App.4th 1201, 1212.)

Father's violence problem was long-standing, and persisted despite voluntary services. Even after the section 300 petition was filed, he minimized the problem and lacked insight. He made progress in therapy, but regressed when his relationship with the therapist ended.

Further, he did not complete his court-ordered programs. "The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental." (§ 366.21, subd. (f).) Father sought to rebut that evidence with his own testimony that he had learned all he needed, but his therapist told DCFS that Father needed more counseling, and the juvenile court impliedly believed the therapist, not Father, commenting that Father "still [had] a lot to learn."

All of these constitute substantial evidence for the juvenile court's decision.

Disposition

The orders at the section 366.22 hearing are affirmed.

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ARMSTRONG, Acting P. J.

We concur:

MOSK, J.

KRIEGLER, J.